IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6279 of 2001

with

CIVIL APPLICATION NO. 8943 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PETHANI MORARJIBHAI HANSARAJBHAI

Versus

RANABHAI LAKHABHAI RANAV

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Appearance:

1. Special Civil Application No. 6279 of 2001

MR PS CHAMPANERI for Petitioner No. 1-3

MR JAYANT PATEL for Respondent No. 1-5

MS. KATHA GAJJAR, AGP, for Respondent No. 6

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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 30/08/2001

C.A.V. JUDGEMENT

1. Pethani Morarjibhai Hansarajbhai and others-petitioners have filed this petition challenging the order dated 16.3.2001 passed by the Gujarat State Co-operative Tribunal. Attention of the Tribunal was also invited to the fact that other side has already filed a caveat but still the Tribunal passed the order without hearing the other side on the ground that there is exceptional circumstances existed.

2. The facts giving rise to this petition are as under:

2.1 Shri Naranbhai Jethabhai Vinzuda and Shri Kantibhai Nathabhai Thumav, respondent Nos. 2 and 3 respectively came to be co-opted as the members of the Executive Committee of Shri Patanvav Juth Vividh Karyakari Sahakari Mandali Ltd. as provided under Section 74B of the Gujarat Co-operative Societies Act on 27.3.2001 and since then they were acting as the members of the Executive Committee.

2.2 The agenda notice for convening the Annual General Meeting was issued on 5.6.2001 and that there was no item for removal of the petitioner Nos. 2 and 3 from the members of the Executive Committee and petitioners were also not issued any notice calling upon them to show cause as to why they should not be removed and no resolution for their removal was passed in the Annual General Meeting.

2.3 It has been alleged in the petition that Laxmanbhai Mavajibhai Pethani, respondent No. 2, appointed respondent No. 1 Ranabhai Lakhabhai Ranva as representative of the Bank in contravention of bye-law No. 26(A) of the bye-laws on 10.6.2001.

3. Being aggrieved and dissatisfied with the said action, the petitioners filed Lavad Suit No. 723 of 2001 before the Nominees Court. The learned Member of the Registrar's Board of Nominees, Rajkot, passed interim order below Exh. 4 and hearing was fixed on 28.6.2001.

4. Respondent Nos. 1 to 5 filed Lavad Suit No. 760 of 2001 on 15.6.2001 and also filed temporary injunction which was not granted. The learned Member of the Registrar's Board of Nominees passed order dated 9.7.2001 in Lavad Suit No. 723 of 2001 below Exh. 4. In that case the Registrar's Board of Nominees heard both the

Lavad Suits, namely, Lavad Suit No. 723 of 2001 and Lavad Suit No. 760 of 2001 and the Board of Nominees accepted injunction application Exh. 4 in Lavad Suit No. 760 of 2001 and directed that 13 members of the Executive Committee of Mandali to carry on the work of the society and as regards election of the President of the Society, the Registrar is directed that Officer of the Rajkot Office S.M. be appointed and as per his direction ballot papers to be voted within 15 days from that date and he is directed to keep separate voting papers of all elected persons of co-opted members and all representative banks till final election of the President is declared the old member President Shri Morarjibhai Hansarajbhai Pethani be continued as President of the society.

5. Being aggrieved and dissatisfied with the said action, it appears that Shri Patanvav Juth Vividh Karyakari Sahakari Mandali Ltd. filed Revision Application No. 318 of 2001 before the Gujarat Co-operative Tribunal. The present petitioner also filed caveat before the Tribunal. The respondents also filed an application to continue the said injunction and the Registrar's Board of Nominees by order dated 9.7.2001 continued the injunction till 25.7.2001. The Tribunal as indicated earlier, despite the fact that caveat was already filed, did not hear the other side-petitioner herein and stated that in view of the extraordinary situation without hearing the caveator, granted injunction till 3.8.2001 in favour of the society.

6. Being aggrieved and dissatisfied with the said action of the Co-operative Tribunal, the present petition is filed by the petitioners on 25.7.2001. When the matter was placed before this court on 3.8.2001, this court passed the following order:

7. Mr. P.S. Champaneri, learned advocate for the petitioner appeared and Mr. Jayant Patel appeared on behalf of the respondent. The respondent has also filed Civil Application for vacating interim relief.

8. Without adjudicating the matter on merits in detail, it is an admitted fact that the caveat was filed by the petitioners and the petitioners were not heard and to that extent the order of the Tribunal dated 16.3.2001 is liable to be quashed and set aside.

9. Mr. Jayant Patel, learned advocate appearing for the applicant in Civil Application No. 8943 of 2001 has contended inter alia, that election of the Co-operative Society was already over and new Committee Members along

with President had already taken the charge on 5.6.2001. In this situation, the elected persons cannot be prevented from acting work of the society. The persons who have already been elected by election were directed to carry of the work of the Co-operative society by the order dated 15.6.2001 passed by the Board of Nominees below Exh. 4 in Lavad Suit No. 723 of 2001. In view of the aforesaid situation, the elected members of the societies whose election was already over on 5.6.2001 and were already carrying on business of the society by virtue of order dated 15.6.2001 were prevented from functioning of the Co-operative societies.

10. In view of the same, the injunction granted by this court on 3.8.2001 is vacated. The Tribunal is directed to hear both the parties and pass short but a speaking order in the matter. Meanwhile the persons who are already elected as members of the Co-operative Societies on 5.6.2001 may carry on business of the society pursuant to the election as well as the order dated 15.6.2001. The Tribunal will decide the matter without being influenced by the order of this court as this court has not adjudicated the matter on merits of the matter. The Tribunal may decide the matter as expeditiously as possible but not later than 15.10.2001. This petition is disposed of accordingly. No order as to costs.

In view of the order passed in the matter, no orders are passed in the Civil Application.

(K.M. MEHTA, J)

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